HON'BLE SRI JUSTICE NINALA JAYASURYA

M.A.C.M.A.No.3493 of 2009

ORDER:

The claimant in O.P.No.423 of 1997 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Anantapur, (hereinafter referred to as the 'Tribunal') has filed the present appeal, seeking enhancement of compensation awarded by the said Tribunal *vide* order dated 18.03.2004.

Before the Tribunal, the appellant/claimant filed a claim petition seeking compensation of Rs.70,000/- towards compensation for the injuries sustained in a road accident. The 4th respondent-Insurance Company filed a counter and contested the matter.

The Tribunal allowed the claim of the appellant/claimant, partly, awarding compensation of Rs.5,000/-, as against the total claim of Rs.70,000/-, towards the injuries sustained by him against which the present appeal has been preferred.

Learned counsel for the appellant submits that the appellant/claimant sustained grievous injuries in a motor vehicle accident that occurred on 18.03.1995. To prove the said aspect, the appellant got examined himself as P.W.1 and the doctor, who treated him, as P.W.2. He filed Exs.A1 to A4 and got them marked. Learned counsel submits that the Tribunal, after going through the evidence on record, on the ground of discrepancies with regard to the evidence of P.W.2 and Ex.A2, awarded compensation of Rs.5,000/- erroneously treating the injury to rib as simple in nature. Learned counsel further submits that the conclusions as arrived

by the Tribunal that the appellant/claimant had not disclosed any tenderness or pain when he was examined in Government Hospital, Tadipatri, and as such any tenderness or injury on the chest was not mentioned in Ex.A2,corresponding to injury of fracture of 4th rib are based on mere conjectures and surmises. Learned counsel submits that the Tribunal is not justified in taking the fracture to the rib as a simple injury and seeks enhancement of compensation as the injury is grievous in nature.

On considering the submissions of the learned counsel and material on record, the conclusion of the Tribunal, in the opinion of this Court are not justifiable. The Tribunal while referring to Ex.A2, mentioned the injury as fracture of 4th rib. In such an event, it cannot be treated as a simple injury, more particularly, in the absence of evidence to the contrary that the injury received by the appellant/claimant i.e., fracture of 4th rib, is simple in nature.

As it is a case of fracture to rib, which cannot be said to be simple in nature, this Court is inclined to hold that the appellant is entitled to reasonable compensation of Rs.15,000/- for the fracture of rib sustained by him. The appellant/claimant is also entitled to Rs.5,000/- towards pain and suffering. Further, the Tribunal went wrong in fixing the liability only against the 1strespondent, merely on the ground that the appellant/claimant did not mention anything in the claim petition with regard to the policy particulars. As seen from the record, the insurance policy was marked as Ex.B1. In the said circumstances, the 1st respondent and the insurance company are liable to pay the compensation jointly and severally.

In view of the foregoing discussion, the appeal is allowed in part, accordingly, enhancing the compensation from Rs.5,000/- to Rs.20,000/- payable by the respondents 1 and 2 jointly and severally with proportionate costs and interest @ 9% p.a. from the date of petition till date of realization, within two (2) months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same.

As a sequel, all the pending miscellaneous applications shall stand closed. No order as to costs.

NINALA JAYASURYA, J

Date: 20.05.2020
AKC

HON'BLE SRI JUSTICE NINALA JAYASURYA

M.A.C.M.A.No.3493 of 2009

Dt: 20.05.2020

AKC